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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ROBERT FRIGG

Appeal 2009-005620
Application 10/735,854
Technology Center 3700

Decided: November 25, 2009

Before RICHARD E. SCHAFER, JAMESON LEE, and MICHAEL P. TIERNEY, *Administrative Patent Judges*.

TIERNEY, *Administrative Patent Judge*.

DECISION ON APPEAL

A. STATEMENT OF THE CASE

This is a decision on appeal by the real party in interest, Synthes (U.S.A.) [hereinafter Synthes] under 35 U.S.C. § 134(a) from a final rejection of claims 2-7, 13-16, and 20, the only claims on appeal. Claim 1 was cancelled prior to this appeal. Claims 8-12, 17-19, and 21-36 were withdrawn from consideration as the result of a requirement under 37 CFR § 1.142(a) prior to this appeal. Synthes requests reversal of the Examiner's rejections of claims 2-7, 13-16, and 20. We have jurisdiction under 35 U.S.C. § 6(b). We reverse.

References Relied on by the Examiner

von Bezold et al. (Bezold)	4,029,091	June 14, 1977

The Rejections on Appeal

The Examiner rejected claims 2-7, 13-16, and 20 under 35 U.S.C. § 102(b) as anticipated by Bezold.

Claims 3-7, 13-16, and 20 each depend directly or indirectly from claim 2. Synthes argues claims 3-7, 13-16, and 20 collectively with claim 2.

The Invention

The invention relates to an osteosynthesis implant with a gimbal-type coupling. (Spec. 1:13-15). Specifically, the invention requires a coupler having at least two connecting elements for connecting a first member to a second member, wherein the connecting elements comprise pins that are pivot-mounted in the first member. (App. Br. 8, Claims App'x.; Spec. 8:11-

14). Claim 2 is illustrative of the claimed invention and is reproduced below:

> 2. An implant comprising: at least one coupler having at least two connecting elements for engaging a first member to a second member; wherein the connecting elements permit the first member to rotate with respect to the second member, and wherein the connecting elements are pins that are pivot-mounted in the first member.

(App. Br. 8, Claims App'x.).

B. ISSUE

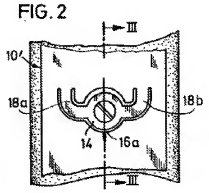
Has Synthes shown that the Examiner improperly found that Bezold teaches pivot-mounted pin connecting elements?

C. FINDINGS OF FACT

Bezold

1. Bezold is directed at an osteosynthesis plate for application to fractured bones, across the fracture site. (Bezold 1:4-8).

2. Bezold Figure 2 depicts a portion of an embodiment of Bezold's osteosynthesis plate and is reproduced below:



Bezold Figure 2, reproduced above, depicts an osteosynthesis plate.

3. Bezold's osteosynthesis plate **10'** includes a plurality of lugs **14** (only

one of which is shown in Figure 2) and connecting elements **18a**, **18b** that connect the lugs **14** to the plate **10′**. (*Id.* at 3:6-11).

4. Bezold teaches that the lugs **14** are formed integrally with the plate **10′** and connected by connecting elements. (*Id.* at 1:55-58 and 3:6-11).

5. Bezold teaches that the connecting elements **18** may comprise "a rod-like connection or cantilever element." (*Id.* at 1:55-58).

6. Bezold teaches that the connecting elements **18a** and **18b** "provide a spring-like elastic suspension and some freedom of movement of the respective lug **14** in the longitudinal direction." (*Id.* at 3:11-14).

7. Bezold does not teach that the connecting elements **18a** and **18b** rotate or turn about a point.

D. PRINCIPLES OF LAW

During examination, claim terms are given their broadest reasonable interpretation consistent with the specification. *In re Morris*, 127 F.3d 1048, 1055 (Fed. Cir. 1997).

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. Inc. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987).

E. ANALYSIS

The Examiner and Synthes disagree on whether or not Bezold teaches pivot-mounted pins. According to the Examiner, Bezold's connecting elements **18a** and **18b** are rod-like (pin) connections. (Ans. at 4-5). The Examiner states that Bezold's connecting element **18** can act as a resilient

cantilever that is capable of pivoting. (*Id.* at 5-6). In particular, the Examiner finds that, since Bezold's connecting element **18** can move in a longitudinal direction, the connecting element can also "pivot/rotate" when the connecting element is not engaged with bone. (*Id.* at 6).

We give claim terms their broadest reasonable interpretation consistent with the specification. *Morris*, 127 F.3d at 1055. Synthes' specification does not provide a special definition for the term "pivot" and instead relies upon its plain and ordinary meaning, which requires rotation about a pin or point. (See, e.g., Spec. 5:21-6:2 and Fig. 1b).

Bezold does not teach pivot-mounted pins. Instead, Bezold teaches connecting elements **18** that may comprise "a rod-like connection or cantilever element." (*Id.* at 1:55-58). Bezold teaches that connecting elements **18a** and **18b** "provide a spring-like elastic suspension and some freedom of movement of the respective lug **14** in the longitudinal direction." (*Id.* at 3:11-14). While the Examiner is correct that Bezold's connecting elements may act as a "resilient cantilever," Bezold's deflection of the end portion of a connecting element is not the same as a pivot-mounted pin, where the entire pin can rotate about a point.

F. CONCLUSION

Synthes has shown that the Examiner improperly found that Bezold teaches two pivot-mounted pin connecting elements.

G. ORDER

The rejections of claims 2-7, 13-16, and 20 under 35 U.S.C. § 102(b), as anticipated by Bezold, are reversed.

REVERSED

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